**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| PAUL S. WHEATON, | : | |
| | : | CIVIL ACTION |
| Plaintiff | : | |
| | : | |
| v. | : | |
| | : | |
| DIVERSIFIED ENERGY, LLC, | : | NO. 03-CV-105 |
| | : | |
| Defendant | : | |

**MEMORANDUM**

Diversified Energy filed this Motion to Limit Plaintiff's Remedies, seeking to preclude Plaintiff from recovering any damages, penalties, or attorney's fees pursuant to Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 Pa. Stat. Ann. § 260.1 et seq. (2004). Defendant argues that the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. (2004), preempts Plaintiff's WPCL claim. Because I find that Defendant has failed to prove that the severance package at issue in this case is part of an ERISA employee benefit plan, I will deny the motion.

## I. BACKGROUND

Paul Wheaton filed this lawsuit against Diversified Energy, alleging breach of an employment contract and violations of the WPCL. The written contract confirmed an agreement that Wheaton would work for Diversified for three years. The contract provided that if Defendant terminated Plaintiff without cause prior to the expiration of that three year period, Plaintiff would receive "severance pay equal to full compensation and benefits for a period of one (1) year following the date of termination." Pl.'s Compl., Ex. A, ¶3(D). Diversified

terminated Wheaton's employment before the three year term expired. Diversified argues that Wheaton's WPCL claim is preempted by ERISA, and requests this court to limit Wheaton's remedies to those available under ERISA.

## II. DISCUSSION

Section 514 of ERISA provides for preemption of state laws insofar as they "relate to employee benefit plans." 29 U.S.C. § 1144(a). "ERISA recognizes two types of employee benefit plans: 'employee pension benefit plans' and 'employee welfare benefit plans.'" Deibler v. United Food & Commercial Workers' Union Local 23, 973 F.2d 206, 209 (3d Cir. 1992) (citing 29 U.S.C. §1002(1)(B)). In evaluating whether a state law is preempted by ERISA, a court must first decide if a "plan" exists. The existence of a plan is a question of fact and "the crucial factor in determining whether a 'plan' has been established is whether [the employer has expressed an intention] to provide benefits on a regular and long-term basis." Deibler, 973 F.2d at 209 (quoting Wickman v. Northwestern Nat'l Ins. Co., 908 F.2d 1077, 1083 (1st Cir. 1990)). The party claiming preemption has the burden of proving that federal law preempts state law. Green v. Fund Asset Mgt., 245 F.3d 214, 230 (3d Cir. 2001). As the Deibler court explained, "a 'plan, fund or program' under ERISA is established if from the surrounding circumstances a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits." Id. Although it is clear that severance benefits may be subject to ERISA regulation, see Ft. Halifax Packing Co. v. Coyne, 482 U.S. 1, 8 n.5 (1987), such benefits "do not implicate the Employee Retirement Income Security Act unless they require the establishment and maintenance of a separate and ongoing administrative scheme." Angst et al. v. Mack Trucks, Inc. et al., 969 F.2d 1530 (3d Cir. 1992).

In Ft. Halifax, the Supreme Court held that a Maine statute which required employers to provide a one-time, lump sum severance payment in the event of a plant closure did not require the creation of a plan and therefore, was not preempted by ERISA. The Court explained:

> The Maine statute neither establishes, nor requires an employer to maintain, an employee benefit *plan*. The requirement of a one-time, lump-sum payment triggered by a single event requires no administrative scheme whatsoever to meet the employer's obligation. The employer assumes no responsibility to pay benefits on a regular basis, and thus faces no periodic demands on its assets that create a need for financial coordination and control. Rather, the employer's obligation is predicated on the occurrence of a single contingency that may never materialize. The employer may well *never* have to pay the severance benefits. To the extent that the obligation to do so arises, satisfaction of that duty involves only making a single set of payments to employees at the time the plant closes. To do little more than write a check hardly constitutes the operation of a benefit plan. Once this single event is over, the employer has no further responsibility. The theoretical possibility of a one-time obligation in the future simply creates no need for an ongoing administrative program for processing and paying benefits.

Ft. Halifax Packing Co., 482 U.S. at 12.

Plaintiff asserts that Ft. Halifax governs the severance benefits at issue in this case. Defendant, however, argues that the employment contract does not call for a "one-time, lump-sum payment," but rather requires Diversified to make payments for a period of one year and to exercise discretion in applying the terms of the severance arrangement and determining which benefits will be extended. Defendant therefore contends that ERISA preempts Plaintiff's WPCL claim.

The contract at issue in this case provides that if the Plaintiff is terminated without cause, he "shall receive severance pay equal to full compensation and benefits for a period of one (1)

year following the date of termination." This provision could be read to require: (1) a single, lump sum payment of both salary and the value of benefits, (2) a single, lump sum payment of salary and a continuation of benefits, or (3) a continuation of both salary and benefits. Because the contract was drafted by the Defendant, to the extent that it is ambiguous, it must be construed in Plaintiff's favor. See, e.g., Nelson Co. v. Counsel for the Official Comm. of Unsecured Creditors, 959 F.2d 1260, 1264 (noting that "[u]nder Pennsylvania law, 'doubtful language is construed strongly against the drafter'") (citation omitted); Janis v. AMP, Inc., 856 A.2d 140, 145 (Pa. Super. 2004). Moreover, neither the payment of a single, lump sum, nor the mere continuation of benefits standing alone triggers ERISA. See Ft. Halifax Packing Co., 482 U.S. at 12; see also Angst, 969 F.2d at 1540 (finding that "the threshold question of whether the employees are entitled to a year of continued benefits does not itself implicate ERISA"). Finally, I find that even if the contract called for a continuation of both salary and benefits, Defendant, who bears the burden of establishing preemption, has failed to prove that the provision of the severance benefits would require the establishment and maintenance of an ongoing administrative scheme.

## III. CONCLUSION

Defendant's motion to limit remedies is premised on the notion that ERISA preempts Plaintiff's WPCL claim. Defendant, however, has failed to meet its burden of establishing that the severance benefits at issue in this case are part of a "plan," and therefore, I will deny the motion.

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| PAUL S. WHEATON, | : | |
| | : | CIVIL ACTION |
| Plaintiff | : | |
| | : | |
| v. | : | |
| | : | |
| DIVERSIFIED ENERGY, LLC, | : | NO. 03-CV-105 |
| | : | |
| Defendant | : | |

**ORDER**

AND NOW, this day of June, 2005, upon consideration of Defendant's Motion to Limit Remedies and Plaintiff's Response thereto, it is hereby ORDERED that the motion is DENIED.

_____

LAWRENCE F. STENGEL, J.